

# BURNISHED LAW JOURNAL

## FLOURISHING RIGHT TO LIFE AND PERSONAL LIBERTY: VERDICTS ON SECTION 377 AND 497 OF IPC

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### **ABSTRACT:**

*Indian constitution is the successful attempt to bring synthesis between individual freedom and social justice. Our constitution not only makes every citizen liable for their duties to perform but also gives certain rights to each and every person. Our constitution guarantees fundamental rights to its citizens like: right to equality, right to freedom, right to property and right to constitutional remedies which are essential for development of human personality. Constitution requires every person to utilize their rights but at the same time they should perform their duties without disturbing other person's right. Every citizen is required to know the rights they possess and should fulfill their duties effectively. Among all these rights provided by the constitution every right has its own importance but Article 21 plays a very pivotal role in society. It is the heart of fundamental rights.*

## INTRODUCTION:

### *What is article 21?*

Article 21 is right to life and personal liberty.

**Article 21:** *“No person is deprived of his life or personal liberty except according to the procedure established by law”.*<sup>1</sup>

Article 21 starts with the negative word **no** which means “deprivation”. The main object of article 21 is the prevention of encroachment on personal liberty and deprivation of life. Right under article 21 is not only guaranteed to the citizen of India but is to every person i.e., non-citizen of India can also claim right under Article 21 of Indian constitution. If the right of the person under Article 21 is violated, then such person can approach court under Article 226 of the Indian constitution. Freedom under Article 19 can only be established if he has the right to personal liberty. Right to Life means the right to lead meaningful and complete life. Usually evidentiary burden will be on the person who is challenging the authority of the statute. But such decisions will not be taken based on majority perception instead it will depend on real scrutiny of existence of right or denial of it. if violated is punishable according to procedure established by law where procedure must be reasonable, fair, just and not arbitrary.

Right to life is very useful for the existence of human being which makes man’s life meaningful, complete and worth living. There are many rights within Article 21 which supports the living of the person. Thus, the right to life includes right to all necessities that are important for human living. The word right to life under art 21 means not only physical existence of life but it means quality of life. Article 21 is the only article in the Constitution that has received the widest possible interpretation.

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There are two major interpretations made where article 21 plays a major role

### ***1. Section 377 of IPC***

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<sup>1</sup> Indian Constitution, Article 21.

## 2. Section 497 of IPC

### Section 377 of IPC:

Section 377 of IPC deals with “unnatural offences”. It says,

*“whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to pay a fine.”*<sup>2</sup>

In the case filed for the decriminalization of section 377, *Navtej Singh Johar &ors v. union of India*,<sup>3</sup> major discussion was held regarding article 21. In this case judges has clearly explained the meaning of right to life and personal liberty and the internal meaning that exists within it which supports the life and livelihood of different types of people in the society.

- **Right to individual dignity**

Right to life also includes right to dignity. Right to personal life and liberty is meaningless if it does not include within itself individual dignity. “**Right to individual dignity**” means the right of the person to perform all such activities which will give him a meaningful human life. The inclusion of right to dignity in article 21 is based on the perception that every individual should be recognized separately and should be respected. Every person has the right to live with dignity in the society and on violation of that he can approach court on basis of violation of article 21. when we consider it in an international view right to live with individual dignity is also considered as one of the human right in 1948 during implementation of **Universal Declaration of Human Rights**. Liberty and dignity are the dual concepts can be treated as twins where with the right of dignity the person will obtain the right of liberty of expression.

Right to life includes “**Right to reputation**” i.e., LGBT persons should not be deprived of right to reputation within the sphere of Article 21. In the case of *Ummesh Kumar v State of Andhra Pradesh*<sup>4</sup> it was held that “that reputation is an element of personal security and protected by the

<sup>2</sup> Indian Penal Code, 1860, section 377.

<sup>3</sup> W.P (cr.) No. 76 of 2016.

<sup>4</sup>CRIMINAL APPEAL NO.1304 of 2013.

Constitution with the right to enjoyment of life and liberty. Thus, for a person to live comfortably and freely in the society he should have reputation in the same society.

- **Right to choose**

Article 21 includes “**Right to Choose Life Partner**”. Every person has right to choose his or her life partner of their own choice. No person can be forced in selection of life partner. If there is any obstruction to the right of choosing life partner that person can approach the court for the violation of Article 21 of constitution. And the court has also taken many major steps to avoid crimes related to this right.

Right to life and personal liberty also includes within itself “**Right to Choice of Sex**”. Article 21 right to personal liberty includes person has a liberty of choice of sex. So, person has liberty to choose with whom he wishes to do sex.

Thus, based on all these above-mentioned rights which are included within article 21 Supreme Court has struck down the criminalization of same sex relations between consenting adults. So, now all the LGBT community members have the liberty to engage in same sex consensual intercourse.

### **SECTION 497 OF IPC:**

Sec 497 of IPC deals with “Adultery”. It states

*“a voluntary extramarital intercourse with a person of the opposite sex, whether unmarried (single) or married (double adultery)”*.<sup>5</sup>

This act of adultery is identified as offence and shall be punished with imprisonment of either description for the term which may extend to five years or with fine or with both. In such case wife will not be punished as an abettor.

- **Right to privacy:**

Privacy means being free from public attention. In the case of *Joseph shine v union of India*<sup>6</sup> which is filed for the decriminalization of Article 497, Article 21 played a pivotal role. As we all know

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<sup>5</sup> Indian Penal Code, 1860, section 497.

<sup>6</sup> WRIT PETITION (CRIMINAL) NO. 194 OF 2017.

privacy is the important one which safeguards an individual's autonomy. So privacy refrains the state from involving in life and personal liberty of a person where the state is under the obligation to protect such privacy of an individual.

Right to privacy under Article 21 also includes right to intimate association.

In the case of *Shaffin Jahan v Ashokan*<sup>7</sup>, it was said that:

*"The right to privacy under Art 21 would include the right of two adults to enter into a sexual relationship outside marriage."*

- **Right to dignity**

When we talk about privacy it is an important part of dignity. Dignity means the quality of being worthy of respect. Our preamble includes the word dignity which guarantees right of dignity life for every individual. Under this except in cases of absolute necessity persons have right not to be subjected to any public censure and he is not liable for punishment by state.

- **Right to liberty:**

Liberty of an individual under Article 21 gives him the choice to choose among the preferences that he would like to select let it be what one eats or dresses. So within the privacy of mind of an individual he has a liberty to choose.

- **Right of choice**

Every person has right to choose her sexual life and they are not liable to any criminal sanction regarding her choice.

Thus, Article 21 has dealt this section 497 of IPC where persons conducting act of adultery has right personal liberty regarding their life and made the practice of adultery not punishable.

### **CONCLUSION:**

In the recent days with the evolution of different problems and cases, right to life and personal liberty has become the pivotal and essential right to every individual since every other article shall include this right within it. As we have seen, right to life and personal liberty under article 21 of

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<sup>7</sup>CRIMINAL APPEAL NO.366 OF 2018 (Arising out of S.L.P.(Cr.) No.5777 of 2017).

Indian constitution has a growing importance in present day of various crimes. This fundamental right, article 21, has become base point for the judiciary while providing verdicts to the typical issues.

In the two different cases of homosexuality and adultery, this right has played a different role and court has struck down the sections regarding that as those sections violates article 21. Hence, our courts have been moving towards reformative justice with the growing importance of right to life and personal liberty.

